

PT 99-52

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

WABASH MEMORIAL HOSPITAL)		
ASSOCIATION)		
)	A.H. Docket #	98-PT-0036
Applicant)		
)	Docket #	97-58-105
v.)		
)	Parcel Index #	04-12-10-278-031
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. James E. Peckert appeared on behalf of Wabash Memorial Hospital Association.

Synopsis:

The hearing in this matter was held at the Willard Ice Building, 101 West Jefferson Street, Springfield, Illinois, on November 17, 1998, to determine whether or not Macon County Parcel Index No. 04-12-10-278-031 qualified for exemption from real estate taxation for the 1997 assessment year.

Mr. Robert W. Kimmons, Administrator of Wabash Memorial Hospital Association, (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include, first, whether the applicant owned the parcel here in issue for real estate tax exemption purposes during the 1997 assessment year; secondly, whether

the applicant is a charitable organization; and lastly whether the applicant used the building on this parcel for charitable purposes during the 1997 assessment year.

Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned this parcel for real estate tax exemption purposes during the entire 1997 assessment year. It is also determined that the applicant is not a charitable organization. Finally it is determined that the applicant did not use this parcel and the building thereon for charitable purposes during the 1997 assessment year.

It is therefore recommended that Macon County Parcel Index No. 04-12-10-278-031 be placed back on the tax rolls for the 1997 assessment year and be assessed to the applicant, the owner thereof.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the "Department") in this matter, namely that this parcel did not qualify for exemption for the 1997 assessment year, was established by the admission in evidence of Department's Exhibit Nos. 1 through 6A.

2. On December 11, 1997, the Macon County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcel here in issue for the 1997 assessment year. (Dept. Ex. No. 2)

3. On April 2, 1998, the Department advised the applicant that it was denying the exemption of this parcel and the building thereon because this parcel had been previously denied exemption for the 1997 assessment year. (Dept. Ex. No. 3)

4. By a letter dated April 8, 1998, the Administrator of the applicant requested a formal hearing in this matter. (Dept. Ex. No. 4)

5. The hearing in this matter, conducted on November 17, 1998, was held pursuant to that request. (Dept. Ex. No. 5)

6. The parcel here in issue was conveyed to The First National Bank of Decatur Trust No. 4159 (hereinafter referred to as the "Trust") by a warranty deed dated June 18, 1993. The beneficiary of the Trust is Wabash Memorial Hospital Association, the applicant herein. (Dept. Ex. Nos. 2A & 2B)

7. The applicant is exempt from federal income tax pursuant to Internal Revenue Code Section 501 (c) (9) which reads as follows:

Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or designated beneficiaries, . . . (Appl. Ex. Nos. 18 & 19)

8. The applicant commenced operations in 1884 providing medical care to the employees, spouses and dependants of employees of the Wabash, St. Louis & Pacific Railway. After several mergers the applicant today provides health care services to the employees, retirees, and dependents of the Kansas City to Detroit line of the Norfolk and Southern Railway. (Appl. Ex. No. 15)

9. The applicant is classified as a Health Care Prepayment Plan by the Health Care Finance Administration (hereinafter referred to as "HCFA"), which reimbursed applicant for certain medical services for Medicare eligible members under a Health Care Prepayment Plan which HCFA administered. (Appl. Ex. No. 24)

10. During 1997 the applicant had approximately 4,600 members. Of this number approximately 2,000 members were current active employees of the Norfolk and Southern Railway. Approximately 500 additional members were employees on disability or sick leave from the Railway. The approximately 2,100 remaining members of the applicant were retired employees of the Wabash, Norfolk & Western, and Norfolk & Southern railroads. These members also included spouses and dependant children of employees. (Tr. pp. 18-20)

11. The applicant is required by law to take all employees, their spouses and dependants as members. The applicant is not allowed to take anyone other than railroad employees, their spouses or dependants as members. (Tr. p. 20)

12. During 1997 the applicant's primary sources of funds included as the first source of funds, payment of a specific lump sum per employee directly from the Norfolk & Southern, pursuant to the unions' collective bargaining agreements with the railroad to the applicant. The second source was from HCFA to reimburse the applicant for Medicare coverage provided to railroad retirees. The third source of funds was dues paid by individual members including retirees, spouses, and dependent children. (Tr. p. 23)

13. As a general rule a member who was required to pay dues who could not afford to pay dues lost his or her benefits under the plan. During 1997, there were at most four members of the applicant whose dues were waived by the applicant. (Tr. pp. 38 & 40)

14. During 1997 the applicant operated medical clinics at various locations along the railroad line as well as having contracts with various hospitals to provide medical care to members. The applicant also had agreements with various physician specialists to provide medical care to members. (Appl. Ex. No. 15)

15. The building on the parcel here in issue includes the administrative offices of the applicant. This building also includes an outpatient clinic where a physician employee of the applicant treats members of the applicant. (Tr. p. 22, Appl. Ex. Nos. 3 & 15)

16. The applicant acquired the parcel here in issue pursuant to a deed in trust on June 17, 1993, subject to a lease to the son of the former owner, who was an optometrist. The son moved out when his lease expired in May or June 1996. During 1997 the area which was formerly leased to the optometrist was empty most of the year. During late 1997 one-third of the former leased area was remodeled into a boardroom by the applicant. The remainder of that leased area was used as an all-purpose room during most of 1997. The former all-purpose area has now been made into a fitness area for the use of the membership of the applicant. (Tr. p. 37)

17. I take Administrative Notice of the Decree in Chancery in the case of Marquis, et al v Pountain, et al, Circuit Court of Macon County, Docket No. 66-C-244, in which the Court determined that the applicant was not a charitable trust subject to the jurisdiction of the Attorney General of Illinois. (Appl. Ex. No. 23)

18. I also take Administrative Notice that on April 15, 1994, the Department in Docket No. 93-58-9 granted an exemption to the applicant for 7% of the 1993 assessment year for this building and parcel, except the 2500 square feet leased to the optometrist and a proportionate share of the land beneath the building.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Concerning charitable organizations, 35 **ILCS** 200/15-65 provides in part as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity;
- (b) beneficent and charitable organizations incorporated in any state of the United States....

In the case of People v. Chicago Title & Trust, 75 Ill.2d 479 (1979), the Illinois Supreme Court determined that the beneficiary of an Illinois land trust who controlled the property and received all of the benefits was the owner of the property for real estate tax purposes. I therefore conclude that the applicant is the owner of the parcel here in issue for real estate tax exemption purposes.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed

strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956); Milward v. Paschen, 16 Ill.2d 302 (1959); and Cook County Collector v. National College of Education, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) and People ex rel. Lloyd v. University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967); Girl Scouts of DuPage County Council, Inc. v. Department of Revenue, 189 Ill.App.3d 858 (2nd Dist. 1989) and Board of Certified Safety Professionals v. Johnson, 112 Ill.2d 542 (1986). It is therefore clear that the burden of proof is on the applicant in this matter.

It should be pointed out that to qualify for an exemption from taxation as a charity, the applicant must demonstrate that there is ownership by a charitable organization and use for charitable purposes. Fairview Haven v. Department of Revenue, 153 Ill. App. 3d 763 (4th Dist. 1987); and Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978).

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court laid down five guidelines to be used in determining whether or not an organization is charitable. Those five guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in its charter; (4) charity is dispensed to all who need and apply for it; and (5) no obstacles are placed in the way of those seeking the benefits. To be a member of applicant, a person must be an employee, spouse or dependant of an employee of the Norfolk and Southern Railway. I therefore conclude that the benefits derived are not for an indefinite number of persons. Since the general rule is that member's dues are not waived or reduced in cases of need, and also since in fact only 4

member's dues were actually waived out of a total of approximately 4,600 members during 1997, I conclude that charity is not dispensed to all who need and apply for it and that obstacles are placed in the way of those seeking the benefits. In view of the fact that the applicant's primary sources of funds were direct payments pursuant to collective bargaining agreements from the railroad, HCFA reimbursement of Medicare payments, and dues paid by the members I conclude that the applicant's funds are not primarily derived from public or private charity. It does appear from the evidence offered that the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise. Since the applicant meets only one of the five aforesaid guidelines found in the Methodist Old Peoples Home case, I conclude that the applicant is not a charitable organization.

In the case of Hospital & Health Service, Inc. v. Aurand, 58 Ill.App.3d 79 (2nd Dist. 1978) the Court held that Hospital & Health Service, Inc. also known as Rockford Blue Cross, was not organized for, or operated for, charitable purposes as required by Article IX, Section 6 of the Illinois Constitution. The Court also concluded that the courts were empowered to determine whether an organization was a charitable organization within the meaning of Article IX, Section 6 of the Illinois Constitution. In that case the Court found it to be critical to the determination that the applicant was not a charitable organization that if an insured did not pay the premiums, coverage would be terminated. That is also the case here. Consequently, I conclude that the applicant is not a charitable organization and did not use this parcel and the building thereon for charitable purposes during the 1997 assessment year.

Concerning the Department's determination in Docket No. 93-58-9 which granted an exemption for this parcel and the building thereon except for the portion which was leased to the optometrist during a portion of 1993, it should be pointed out that courts have held that since a cause of action for taxes for one year is not the same as or identical with a cause of action for taxes for subsequent years, the decision that property is taxable or exempt for certain years is not *res judicata* as to the status of property during subsequent years. A property owner may be required to litigate the issue of its exempt status annually. Jackson Park Yacht Club v.

Department of Local Government Affairs, 93 Ill.App.3d 542 (1st Dist. 1981); Hopedale Medical Foundation v. Tazewell County Collector, 59 Ill.App.3d 816 (3rd Dist. 1978); Du Page County Board Of Review v. Joint Commission on Accreditation of Healthcare Organizations, 274 Ill.App.3d 461 (2nd Dist. 1995), notice of appeal denied; and People ex rel. Tomlin v. Illinois State Bar Association, 89 Ill.App.3d 1005 (4th Dist. 1980).

I therefore recommend that Macon County Parcel Index No. 04-12-10-278-031 and the building thereon be placed back on the tax rolls and that they be assessed to the applicant, the owner thereof, for real estate tax purposes for the 1997 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
April 22, 1999